

paid to few of the studied workers in the class;

(2) Statistical deviation such as a skewed (bimodal or multimodal) frequency distribution biases the median rate due to large concentrations of workers toward either end of the distribution curve and the computed median results in an actual rate that is paid to few of the studied workers in the class; or

(3) The computed median rate distorts historic wage relationships between job levels within a classification family (i.e., Electronic Technician Classes A, B, and C levels within the Electronic technician classification family), between classifications of different skill levels (i.e., a maintenance electrician as compared with a maintenance carpenter), or, for example, yields a wage movement inconsistent with the pattern shown by the survey overall or with related and/or similarly skilled job classifications.

(c) *Slotting wage rates.* In some instances, a wage survey for a particular locality may result in insufficient data for one or more job classifications that are required in the performance of a contract. Establishment of a prevailing wage rate for certain such classifications may be accomplished through a "slotting" procedure, such as that used under the Federal pay system. Under this procedure, wage rates are derived for a classification based on a comparison of equivalent or similar job duty and skill characteristics between the classifications studied and those for which no survey data is available. As an example, a wage rate found prevailing for the janitorial classification may be adopted for the classification of mess attendant if the skill and duties attributed to each classification are known to be rated similarly under pay classification schemes. (Both classifications are assigned the same wage grade under the Coordinated Federal Wage System and are paid at the Wage Board grade 2 when hired directly by a Federal agency.)

(d) *Due consideration.* In making wage and fringe benefit determinations, section 2(a)(5) of the Act requires that due consideration be given to the rates that would be paid by the Federal agency to the various classes of service

employees if section 5341 or section 5332 of title 5 U.S.C., were applicable to them. Section 5341 refers to the Wage Board or Coordinated Federal Wage System for "blue collar" workers and section 5332 refers to the General Schedule pay system for "white collar" workers. The term *due consideration* implies the exercise of discretion on the basis of the facts and circumstances surrounding each determination, recognizing the legislative objective of narrowing the gap between the wage rates and fringe benefits prevailing for service employees and those established for Federal employees. Each wage determination is based on a survey or other information on the wage rates and fringe benefits being paid in a particular locality and also takes into account those wage rates and fringe benefits which would be paid under Federal pay systems.

§ 4.52 Fringe benefit determinations.

(a) Wage determinations issued pursuant to the Service Contract Act ordinarily contain provisions for vacation and holiday benefits prevailing in the locality. In addition, wage determinations contain a prescribed minimum rate for all other benefits, such as insurance, pension, etc., which are not required as a matter of law (i.e., excluding Social Security, unemployment insurance, and workers' compensation payments and similar statutory benefits), based upon the sum of the benefits contained in the U.S. Bureau of Labor Statistics, Employment Cost Index (ECI), for all employees in private industry, nationwide (and excluding ECI components for supplemental pay, such as shift differential, which are considered wages rather than fringe benefits under SCA). Pursuant to Section 4(b) of the Act and § 4.123, the Secretary has determined that it is necessary and proper in the public interest, and in accord with remedial purposes of the Act to protect prevailing labor standards, to issue a variation from the Act's requirement that fringe benefits be determined for various classes of service employees in the locality.

(b) The minimum rate for all benefits (other than holidays and vacation)

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which are not legally required, as prescribed in paragraph (a) of this section, shall be phased in over a four-year period beginning June 1, 1997. The first year the rate will be \$.90 per hour plus one-fourth of the difference between \$.90 per hour and the rate prescribed in paragraph (a) of this section; the second year the rate will be increased by one-third of the difference between the rate set the first year and the rate prescribed; the third year the rate will be increased by one-half of the difference between the rate set in the second year and the rate prescribed; and the fourth year and thereafter the rate will be the rate prescribed in paragraph (a) of this section.

(c) Where it is determined pursuant to § 4.51(b) that a single fringe benefit rate is paid with respect to a majority of the workers in a class of service employees engaged in similar work in a locality, that rate will be determined to prevail notwithstanding the rate which would otherwise be prescribed pursuant to this section. Ordinarily, it will be found that a majority of workers receive fringe benefits at a single level where those workers are subject to a collective bargaining agreement whose provisions have been found to prevail in the locality.

(d) A significant number of contracts contain a prevailing fringe benefit rate of \$2.56 per hour. Generally, these contracts are large base support contracts, contracts requiring competition from large corporations, contracts requiring highly technical services, and contracts solicited pursuant to A-76 procedures (displacement of Federal employees), as well as successor contracts thereto. The \$2.56 benefit rate shall continue to be issued for all contracts containing the \$2.56 benefit rate, as well as resolicitations and other successor contracts for substantially the same services, until the fringe benefit rate determined in accordance with paragraphs (a) and (b) of this section equals or exceeds \$2.56 per hour.

(e) *Variance procedure.* (1) The Department will consider variations requested by contracting agencies pursuant to Section 4(b) of the Act and § 4.123, from the methodology described in paragraph (a) of this section for determining prevailing fringe benefit rates.

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This variation procedure will not be utilized to routinely permit separate fringe benefit packages for classes of employees and industries, but rather will be limited to the narrow circumstances set forth herein where special needs of contracting agencies require this procedure. Such variations will be considered where the agency demonstrates that because of the special circumstances of the particular industry, the variation is necessary and proper in the public interest or to avoid the serious impairment of government business. Such a demonstration might be made, for example, where an agency is unable to obtain contractors willing to bid on a contract because the service will be performed at the contractor's facility by employees performing work for the Government and other customers, and as a result, paying the required SCA fringe benefits would cause undue disruption to the contractor's own work force and pay practices.

(2) It will also be necessary for the agency to demonstrate that a variance is in accordance with the remedial purpose of the Act to protect prevailing labor standards, by providing comprehensive data from a valid survey demonstrating the prevailing fringe benefits for the specific industry. If the agency does not continue to provide current data in subsequent years, the variance will be withdrawn and the rate prescribed in paragraph (a) of this section will be issued for the contract.

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§ 4.53 Collective bargaining agreement (successorship) determinations.

Determinations based on the collective bargaining agreement of a predecessor contractor set forth by job classification each provision relating to wages (such as the established straight time hourly or salary rate, cost-of-living allowance, and any shift, hazardous, and other similar pay differentials) and to fringe benefits (such as holiday pay, vacation pay, sick leave pay, life, accidental death, disability, medical, and dental insurance plans, retirement or pension plans, severance pay, supplemental unemployment benefits, saving and thrift plans, stock-option plans, funeral leave, jury/witness